

**Before The  
Federal Communications Commission  
Washington, D.C.**

In the Matter of	)	
	)	
Request for Review by	)	CC Docket No. 02-6
Net56, Inc. of the Administrator's Decisions	)	
On Appeal – Funding Year 2007	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service	)	Wheeling School District 21
Support Mechanism	)	2007 FRNs 1618118, 1618153, 1618172,
	)	1617776, 1618055

**REQUEST FOR REVIEW BY NET56, INC.  
OF THE DECISIONS OF THE UNIVERSAL SERVICE ADMINISTRATOR**

Net56, Inc. (“Net56”) respectfully requests, pursuant to Sections 54.719 through 54.7123 of the Commission’s rules,<sup>1</sup> that the Commission review the Universal Service Administrative Company (“USAC”) Decision on Appeal for Funding Year 2007 with respect to the above-referenced FRNs (“Administrator’s Decision”).<sup>2</sup> The Administrator’s Decision was issued on November 21, 2013 in response to a Letter of Appeal filed by Net56 on April 5, 2012.<sup>3</sup>

USAC has reduced funding requests by the following amounts:

- \$205/month from the WAN Internet Access service for each IBM server (used to provide DNS and DHCP functionality for Net56’s Internet Access service) on the grounds that these servers should have been classified as providing internal connection instead of Internet access;
- \$1350/month from the Firewall service for the firewall equipment at the Net56 data center, which USAC found to be an “ineligible location” and “redundant”;

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<sup>1</sup> 47 C.F.R. §§ 54.719-54.723.

<sup>2</sup> The FCC Form 471 Application Number on which the above-referenced 2007 FRNs were submitted to USAC was 583628. Wheeling School District 21 is the Billed Entity for the application, and its Billed Entity Number (“BEN”) is 135338.

<sup>3</sup> See Administrator’s Decision on Appeal for Funding Year 2007, dated November 21, 2013, attached hereto as Exhibit 1 (“Administrator’s Decision”).

- \$1000/month from the Web Hosting services for archiving and journaling, which USAC found to be ineligible services; and
- \$1000/month from the Email services for archiving and journaling, which USAC found to be ineligible services.

The only basis ever offered by USAC in support of the above funding reductions is a statement of a Net56 employee made casually in the context of a different school district for a different funding year. The statement should not by itself suffice to deny a COMAD appeal where, as is the case here, USAC did not make any showing in the first place that its determination is correct. A COMAD is a serious punishment and e-rate participants ought to be afforded the basic due process of having their appeal of a COMAD decided on the merits. While it is fair for USAC to demand that Net56 and the applicant justify the requested funding in light of the past statement, it is unfair for USAC to summarily deem its determination of reduced funding to be irrefutably proven by such statement, without any opportunity to prove otherwise. By definition, a COMAD proceeding is one in which USAC is given a second chance to try to correct a mistake that it thinks it made. Parties subjected to COMADs should not be deprived of that same opportunity. Net56 believes it should have the opportunity to have its case heard on its merits, and accordingly in this appeal provides detailed cost information and documentation to refute the premise of the partial denial of funding.

#### **I. The DNS/DHCP Server Was an Integral Part of Internet Access Service, Not an Internal Connection**

USAC reduces the FRN by \$205/month from the WAN Internet Access service for each IBM server (used to provide DNS and DHCP functionality for Net56's Internet Access service) on the grounds that these servers should have been classified as providing internal connection instead of Internet access. The relevant Eligible Service Lists (ESL) expressly provide that Priority 1 Internet Access service can include Domain Name Service to translate the alphabetical

names input by users into the IP addresses used by Internet devices and Dynamic Host Configuration Protocol to assist with providing devices with a unique address.<sup>4</sup> The ESL also provides eligibility for funding as a part of Internet Access for a “Wide Area Network” (WAN) that provides connections from within an eligible school location to other locations “if the service is limited to basic conduit access to the Internet and the offering is the most cost-effective means of accessing the Internet.”<sup>5</sup> Net56 deployed IBM servers at each premises to provide DNS and DHCP functionality for its Internet Access service, which was delivered via a WAN.

DNS is essential to Internet Access, as maps domain names to IP addresses so that users can access third party websites. DHCP is used to provide dynamic IP addresses to devices so that they may interact with the Internet. Net56’s Internet Access service could not have performed properly without these functions, and the use of the Internet Access service was the purpose for which this server was deployed. This is why these functions were included in the ESL, and USAC cannot dispute that Net56 is permitted to incorporate the cost of DNS and DHCP into its integrated Internet Access service.

While USAC did not clearly explain the basis of its decision, in a similar case involving a different district served by Net56 in the 2009 funding year, USAC decided that the servers were internal connections under the Commission’s *Tennessee Order*.<sup>6</sup> In that case, USAC claimed that the servers “failed” the guidelines for rebutting an internal connection classification for two reasons. First, in the *Tennessee* case, the Commission found that the on-premises equipment should be included in Priority 1 funding because “the schools’ internal networks would continue

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<sup>4</sup> See, e.g., Schools and Libraries’ Eligible Services List for Funding Year 2007, pp. 6, 30-31.

<sup>5</sup> *Id.* at p. 7.

<sup>6</sup> See Further Explanation of Administrator’s Funding Decision Letter regarding to Country Club Hills School District for Funding Year 2009 (March 26, 2010) (hereinafter “2009 Further Explanation Letter”), citing *In Re Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator*, Order, 14 FCC Rcd 13734 (FCC rel. Aug. 11, 1999) (hereinafter “Tennessee Order”).

to function without connection to the equipment.”<sup>7</sup> For Net56’s typical service configuration in 2009, USAC found that Net56 “failed” to meet this criterion “because the DHCP/DNS service would not be able to function if the servers were removed.”<sup>8</sup> But that is not the question. Of course DNS and DHCP would have been affected by removal of the equipment that was performing those Internet Access functions. The question is whether the District’s internal networks would have continued to function during the funding years at issue in this appeal without Net56’s DNS/DHCP service, and the answer is yes, because the DNS/DHCP functions were part of the Internet Access service. This indicates that the server was *not* actually part of the schools’ internal connections.

Second, USAC’s decision with respect to the other district for the 2009 funding year pointed to the *Tennessee* test factor that on-premises equipment would appear to warrant Priority 1 classification where “There is no contractual, technical, or other limitation that would prevent the service provider from using its network equipment, in part, for other customers.” USAC found that the servers “failed” this part of the test “because the servers are located at an applicant site; as such, it would not be possible for the vendor to utilize the same servers to provide DNS/DHCP service to another customer.” In that case, USAC misapplied the Commission’s test. By definition, the *Tennessee* test is applied to equipment on the premises of the school, so it cannot be that equipment would fail it if located on school premises. USAC’s circular reasoning would obliterate the meaning of the Commission’s *Tennessee Order*, which in fact did find that certain on-premises equipment should have been classified as Priority 1. While the location of the equipment at the time made it less likely that it would be used for other customers, Net56 could re-locate the equipment because it retained ownership. The relevant test is only that

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<sup>7</sup> Tennessee Order, ¶ 38.

<sup>8</sup> See 2009 Further Explanation Letter.

“There is no contractual, technical, or other limitation that would prevent the service provider from using its network equipment, in part, for other customers.” There was no such limitation.

The reality is that the servers were an integrated part of Net56’s basic Internet access service. The server was the beginning and end point of the Internet Access service so that devices at the schools could utilize the service. By contrast, Internal Connections are “components located at the applicant site that are necessary to transport information to classrooms, publicly accessible rooms of a library, and to eligible administrative areas or buildings. Internal Connections include connections within, between or among instructional buildings that comprise a school campus or library branch, but do not include services that extend beyond the school campus or library branch.”<sup>9</sup> Net56’s Internet Access service, including its DNS and DHCP functions, did “extend beyond” the District’s premises.

In this case, the servers were provided by Net56, the same service provider that provides the eligible Internet access service. Net56 had responsibility for maintaining the equipment, not the District. Net56 retained ownership of the equipment, even today, and it will not transfer to the District. The agreements between the parties do not contain any option for the District to purchase the equipment. Net56 did not charge any upfront, capital charges for the equipment, but instead bore such costs itself to be defrayed through the ongoing price of the services. All of these are factors that USAC has considered to weigh in favor of a Priority 1 classification.

For all of these reasons, the servers are an integral part of the basic Internet Access service and not internal connections. Therefore, USAC should not reduce funding for the portion of the Internet Access WAN that Net56 previously allocated to the DNS/DHCP servers.

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<sup>9</sup> Schools and Libraries’ Eligible Services List for Funding Year 2007, p.9 (emphasis added).

## **II. The Firewall Service Should Not be Partially Defunded for Locating Equipment in the Net56 Data Center**

USAC reduced the funding request for the firewall service by \$1350/month because it determined (1) the “Net56 data center is an ineligible location” and (2) “the firewall protection at the data center is redundant and therefore not eligible for funding.”

It is puzzling that USAC would argue that funding would not be appropriate for services powered in any part by equipment located in the service provider’s data center. Such a rule, if applied elsewhere, would render ineligible every Internet Access service. It is particularly confounding when USAC has, at the same time, faulted Net56 for locating its DNS/DHCP servers on school premises rather than in its data center. The presence of some firewall functionality at more than one location is not “redundant.” Net56’s best-practice, standard firewall service, which it provides to its commercial customers as well, permits customers to tailor its firewall needs for each location, rather than requiring all customers to have the same service, and this required the presence of firewall functionality at the premises and the data center. In addition, the service could not be as robust if all firewall functions were only in one location.

It is true of many services that portions of functionalities are performed by multiple pieces of equipment that may be at multiple locations – just as Internet Access service may be powered by a modem and router at the customer premises and by network equipment at the provider’s data center. Therefore, USAC has not identified any valid reason why funding for the firewall service should be partially reduced.

Finally, it would be particularly unjust to reduce funding based upon an unclear basis when the FCC acknowledged at the time that the “eligibility of firewall service is now ambiguous and confusing.”<sup>10</sup>

### **III. The Funding Reduction for Archiving and Journaling is Excessive**

Net56 acknowledges that it provided retention (archiving) and journaling functionality in connection with its Web Hosting and Email Services, and that these functions are ineligible for e-rate support. However, the incremental cost to Net56 for these functions was much, much smaller than the \$1,000 per month per service sought by USAC. A Net56 representative provided that figure to USAC in 2009 when asked about these services. That person is no longer with the company, and we have been unable to determine the source of his information. It may be that he estimated the cost of purchasing these services separately using different, stand-alone equipment. If so, that is not a reasonable method for determining the portion of the funding request to allocate to the ineligible function in this case, because a stand-alone solution would be much more expensive. The equipment that Net56 needed and used in any case to deliver the *eligible* services was able to perform the retention and journaling functions with only one additional incremental cost for storage. Net56 purchased two 500 GB IBM-39M4554 hard drives for the District for \$526 each to provide storage for both of these two services, combined – far less than the \$24,000 per year funding reduction.

In the attached Exhibit 2, Net56 has used the same formula employed in other successful appeals to USAC to generate a monthly service price allocable to these hard drives. This formula adds 50% for installation cost and 50% annually for maintenance, and 11.25% for Net56’s overhead, spread over 36 months. Using this formula, the hard drives represent \$60.30

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<sup>10</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, 23 FCC Rcd 11703, ¶ 20 (2008).

per month per service. USAC should limit its reduction in funding to this amount per month, for a total reduction of \$723.60 ( $\$60.30 * 12$  months) for each of the services.

### **Conclusion**

For the foregoing reasons, the Commission should grant Net 56's appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "DWT", is positioned above the printed name and address.

Davis Wright Tremaine LLP  
1919 Pennsylvania Ave., NW, Suite 800  
Washington, DC 20006-3401  
(202) 973-4275  
Counsel for Net56, Inc.

January 16, 2014



## CERTIFICATE OF SERVICE

I, Gina Lee, hereby certify that a true and correct copy of the foregoing *Request for Review by Net56, Inc. of the Decisions of The Universal Service Administrator* was mailed postage prepaid this 16<sup>th</sup> day of January, 2014 to the following:

Universal Service Administrative Company  
Schools and Libraries Division  
100 South Jefferson Road  
P.O. Box 902  
Whippany, New Jersey 07981

/s/

Gina Lee

## **EXHIBIT 1**



**Universal Service Administrative Company**  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2007-2008**

November 21, 2013

Paul B. Hudson  
Davis Wright Tremaine LLP  
1919 Pennsylvania Ave. NW  
Suite 800  
Washington, DC 20006

Re: Applicant Name: WHEELING SCHOOL DISTRICT 21  
Billed Entity Number: 135338  
Form 471 Application Number: 583628  
Funding Request Number(s): 1618118, 1618153, 1618172, 1617776, 1618055  
Your Correspondence Dated: April 05, 2012

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2007 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1617776, 1618055  
Decision on Appeal: **Approved**  
Explanation:

- You have brought forward persuasive information that your appeal for the funding requests cited above should be approved.

Funding Request Number(s): 1618118  
Decision on Appeal: **Approved, Funding Reduced**  
Explanation:

- You have brought forward persuasive information that your appeal for the funding request cited above should be approved. However, the amount of funds requested has been reduced for the reasons cited below.

The firewall component of the Net56 solution includes firewall protection at both the applicant's site and the Net56 data center. The Net56 data center is an ineligible location; accordingly, equipment located there is ineligible for funding. USAC has also determined that the firewall protection at the data center is redundant and therefore not eligible for funding under program rules. In Bruce L. Koch of Net56, Inc., February 22, 2009, response to USAC's information request regarding cost allocation of this firewall component of the Net56 solution indicated that the cost associated with the firewall equipment located at the Net56 data center was \$1,350.00 per month or \$16,200.00 annually pre-discount. Consequently, the amount of funds requested has been reduced.

- FCC rules provide that funding may be approved only for eligible products and services. See 47 C.F.R. secs. 54.502, 54.503. The USAC website contains a list of eligible products and services. See the website, [www.usac.org/sl](http://www.usac.org/sl), Eligible Services List. FCC rules further require that if 30% or more of the applicant's funding request includes ineligible products and/or services, then the funding request must be denied, otherwise the funding request will be reduced accordingly. See 47 C.F.R. sec. 54.504(d).

Funding Request Number(s): 1618153

Decision on Appeal: **Approved, Funding Reduced**

Explanation:

- You have brought forward persuasive information that your appeal for the funding request cited above should be approved. However, the amount of funds requested has been reduced for the reasons cited below.

FRN 1618153 requested funding in the amount of \$5,000.00 per month for Internet access. In Bruce L. Koch of Net56, Inc., February 22, 2009, response to USAC's information request regarding the specific services included in the Web Hosting funding request, it was indicated that these services include Web retention and Web journaling. Web retention is archiving of information and Web journaling is application services. These products/services are ineligible under program rules. Net56 provided additional documentation that enabled USAC to appropriately revise the funding request and remove the costs associated with ineligible products and/or services. The cost associated with the ineligible products/services was determined to be \$1,000.00 per month. Consequently, the amount of funds requested has been reduced.

- FCC rules provide that funding may be approved only for eligible products and services. See 47 C.F.R. secs. 54.502, 54.503. The USAC website contains a list of eligible products and services. See the website, [www.usac.org/sl](http://www.usac.org/sl), Eligible Services List. FCC rules further require that if 30% or more of the applicant's funding request includes ineligible products and/or services, then the funding request must be denied, otherwise the funding request will be reduced accordingly. See 47 C.F.R. sec. 54.504(d).

Funding Request Number(s): 1618172

Decision on Appeal: **Approved, Funding Reduced**

Explanation:

- You have brought forward persuasive information that your appeal for the funding request cited above should be approved. However, the amount of funds requested has been reduced for the reasons cited below.

FRN 1618172 requested funding in the amount of \$5,000.00 per month for Internet access. In Bruce L. Koch of Net56, Inc., February 22, 2009, response to USAC's information request regarding the specific services included in the email component of the Net56 solution, it was indicated that these services include Email retention and Email journaling. Email retention is archiving of information and Email journaling is application services. These products/services are ineligible under program rules. Net56 provided additional documentation that enabled USAC to appropriately revise the funding request and remove the costs associated with ineligible products and/or services. The cost associated with the ineligible products/services was determined to be \$1,000.00 per month. Consequently, the amount of funds requested has been reduced.

- FCC rules provide that funding may be approved only for eligible products and services. See 47 C.F.R. secs. 54.502, 54.503. The USAC website contains a list of eligible products and services. See the website, [www.usac.org/sl](http://www.usac.org/sl), Eligible Services List. FCC rules further require that if 30% or more of the applicant's funding request includes ineligible products and/or services, then the funding request must be denied, otherwise the funding request will be reduced accordingly. See 47 C.F.R. sec. 54.504(d).

Since the Administrator's Decision on Appeal restores the original commitments for your application, USAC will issue a Revised Funding Commitment Decision Letter (RFCDL) to you and to each service provider that provides the services approved for discounts in this letter. USAC will issue the RFCDL to you as soon as possible. The RFCDL will inform you of the precise dollar value of your approved funding request(s). As you await the RFCDL, you may share this Administrator's Decision on Appeal with the relevant service provider(s).

Since the Administrator's Decision on Appeal modifies the commitment adjustment for your application, USAC will issue a Revised Funding Commitment Decision Letter (RFCDL) to you and to each service provider that provides the services approved for discounts in this letter. USAC will issue the RFCDL to you as soon as possible. The RFCDL will inform you of the precise dollar value of your approved funding request(s). As you await the RFCDL, you may share this Administrator's Decision on Appeal with the relevant service provider(s).

Since your appeal has been approved, but funding has been reduced, you may appeal this decision to either USAC or the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal with USAC or directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

cc: Jason Klein

Paul B. Hudson  
Davis Wright Tremaine LLP  
1919 Pennsylvania Ave. NW  
Suite 800  
Washington, DC 20006

Billed Entity Number: 135338  
Form 471 Application Number: 583628  
Form 486 Application Number:

## **EXHIBIT 2**



Net 56, Inc.									
Email and Web Hosting Retention and Journaling Allocation									
Equipment	Cost per Hard Drive	Install Cost	Total of Equipment and Install	Monthly Cost Spread over 36 months	Monthly Maintenance for 12 months	Monthly Overhead Costs	Total Monthly Allocation Per Hard Drive	Number of Hard Drives	Monthly Allocation (Both Services)
IBM-39M4554 500 GB Hard Drive	\$ 526.00	\$ 263.00	\$ 789.00	\$ 21.92	\$ 21.92	\$ 16.47	\$ 60.30	2	\$ 120.61
Equipment Cost and Install spread over a 36 month period.									
Maintenance Cost per month									
Equipment must be replaced on average after 36 months.									
Overhead of 11.25% added for operations, cost of money and other overhead expenses									